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Delaware joins lawsuit against pharmaceutical giant Wyeth

Wilmington, DE – The Delaware Attorney General’s Office has announced that on Monday it joined two whistleblower actions by filing a lawsuit with fifteen other states against the drug manufacturer Wyeth. The suit alleges that Wyeth Pharmaceutical failed to provide the Medicaid program with the same discounts it gives to private purchasers of its drugs, as required by law. As a result, Wyeth allegedly avoided paying hundreds of millions of dollars in rebates due to state Medicaid programs for its drugs Protonix Oral and Protonix IV.

“Overcharging Medicaid puts a strain on hardworking taxpayers,” said Timothy Mullaney, Director of the Attorney General’s Fraud and Consumer Protection Division. “The Attorney General’s Office is committed to holding companies that try to side-step the law accountable for their actions.”

Between 2000 and 2006, Wyeth offered discounts to thousands of hospitals nationwide for Protonix Oral and Protonix IV when both drugs were purchased together. This “bundle” pricing gave up to a 94% discount for Protonix Oral and up to an 80% discount for Protonix IV. In order to ensure that Medicaid receives the same discounts offered to large commercial customers, the Medicaid Drug Rebate Program requires that drug manufacturers report to the government the prices they charge customers, including the “best price” offered for their drugs. In addition, companies are required to pay rebates to state Medicaid programs that are calculated based on discounted prices they offer to other customers. Wyeth allegedly failed to determine the discounted prices of the bundled drugs and provide the required rebate to state Medicaid programs, therefore avoiding to pay hundreds of millions of dollars owed to Medicaid.

The states’ investigation, coordinated by the National Association of Medicaid Fraud Control Units, is being led by the Director of the Delaware Department of Justice Medicaid Fraud Control Unit, Deputy Attorney General Dan Miller. In preparation for litigation, Delaware subpoenaed several hundred thousand documents from Wyeth and coordinated the review of those documents. This action follows a similar intervention on May 18, 2009 by the federal government in the same two whistleblower suits filed in the United States District Court for the District of Massachusetts.

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